IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 18, 2003 Session

AUSSIE LEE HUMPHREY, ET AL. v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission, Eastern Division
No. 20300085 Vance W. Cheek, Jr., Commissioner

FILED AUGUST 28, 2003

No. E2003-00617-COA-R3-CV

This claim against the State of Tennessee arises out of a three-vehicle accident. The plaintiff, Aussie Lee Humphrey[1], who was driving one of the vehicles, sued William Alan Klingensmith, the driver of one of the other vehicles. After the one-year period of limitations found in Tenn. Code Ann. § 28-3-104 (2000) had expired, Klingensmith amended his answer to allege the comparative fault of the State. Within 90 days of the amendment, Humphrey filed a claim against the State, relying upon Tenn. Code Ann. § 20-1-119 (Supp. 2002). The Claims Commission held that the State was not one of the "governmental entities" contemplated by the language of Tenn. Code Ann. § 20-1-119(g) and dismissed the claim against the State. Humphrey appeals. We reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Claims Commission Reversed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and WILLIAM H. INMAN, SR.J., joined.

Herbert A. Thornbury, Chattanooga, Tennessee, for the appellants, Aussie Lee Humphrey and Manza Humphrey.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Rebecca Lyford, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Tenn. Code Ann. § 20-1-119 provides, in pertinent part, as follows:

> (a) In civil actions where comparative fault is or becomes an issue, if a defendant named in an original complaint initiating a suit filed

[1] Mr. Humphrey's wife, Manza Humphrey, is also a party to this appeal. However, for ease of reference, we refer only to Mr. Humphrey as "Humphrey."

> within the applicable statute of limitations, or named in an amended complaint filed within the applicable statute of limitations, alleges in an answer or amended answer to the original or amended complaint that a person not a party to the suit caused or contributed to the injury or damage for which the plaintiff seeks recovery, and if the plaintiff's cause or causes of action against such person would be barred by any applicable statute of limitations but for the operation of this section, the plaintiff may, within ninety (90) days of the filing of the first answer or first amended answer alleging such persons' fault, either:
>
> * * *
>
> (2) Institute a separate action against that person by filing a summons and complaint. If the plaintiff elects to proceed under this section by filing a separate action, the complaint so filed shall not be considered an "original complaint initiating the suit" or "an amended complaint" for purposes of this subsection.
>
> (b) A cause of action brought within ninety (90) days pursuant to subsection (a) shall not be barred by any statute of limitations. This section shall not extend any applicable statute of repose, nor shall this section permit the plaintiff to maintain an action against a person when such action is barred by an applicable statute of repose.
>
> (c) This section shall neither shorten nor lengthen the applicable statute of limitations for any cause of action, other than as provided in subsection (a).
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> * * *
>
> (f) For purposes of this section, "person" means any individual or legal entity.
>
> (g) *Notwithstanding any provision of law to the contrary, this section applies to suits involving governmental entities.*

(Emphasis added).

The State contends, and the Claims Commission agreed, that the State is not a governmental entity, as contemplated by subsection (g). The State asserts that, since "governmental entity" is not defined in the statute, it is necessary to look to the Governmental Tort Liability Act ("GTLA"). The GTLA's definition of governmental entity, found in Tenn. Code Ann. § 29-20-102(3) (2000), does not include the State. Therefore, the State reasons, § 20-1-119 does not apply to the State.

The rules relating to statutory construction are well-settled:

> Issues of statutory construction are questions of law and shall be reviewed de novo without a presumption of correctness. This Court's role in statutory interpretation is to ascertain and to effectuate the legislature's intent. Generally, legislative intent shall be derived from the plain and ordinary meaning of the statutory language when a statute's language is unambiguous.

Freeman v. Marco Transp. Co., 27 S.W.3d 909, 911 (Tenn. 2000) (internal citations omitted). However, when the statutory language is ambiguous "and the parties legitimately derive different interpretations, we must look to the entire statutory scheme to ascertain the legislative intent." ***Jordan v. Baptist Three Rivers Hosp.***, 984 S.W.2d 593, 599 (Tenn. 1999). In ascertaining this intent, courts should consider, among other things, the legislative history of the statute. ***Bowden v. Memphis Bd. of Educ.***, 29 S.W.3d 462, 465 (Tenn. 2000); *see also* ***BellSouth Telecomms., Inc. v. Greer***, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997); ***Storey v. Bradford Furniture Co.***, 910 S.W.2d 857, 859 (Tenn. 1995); ***Univ. Computing Co. v. Olsen***, 677 S.W.2d 445, 447 (Tenn. 1984). In expounding upon the usefulness of a statute's legislative history, this Court has stated as follows:

> Courts consult legislative history not to delve into the personal, subjective motives of individual legislators, but rather to ascertain the meaning of the words in the statute. The subjective beliefs of legislators can never substitute for what was, in fact, enacted. There is a distinction between what the legislature intended to say in the law and what various legislators, as individuals, expected or hoped the consequences of the law would be. The answer to the former question is what courts pursue when they consult legislative history; the latter question is not within the courts' domain.

BellSouth, 972 S.W.2d at 673.

We find the term "governmental entity," as it is used in Tenn. Code Ann. § 20-1-119(g), to be ambiguous. There is no definition of the term in the statute, the chapter, or the title, and the parties have "legitimately derive[d] different interpretations" of the term. ***Jordan***, 984 S.W.2d at 599. We must therefore turn to the legislative history to resolve this ambiguity.

In discussing the proposed addition of subsection (g) to the statute, House Representative Buck, who was then Chairman of the House Judiciary Committee, stated as follows:

> When [a] defendant pleads [the comparative fault of a third party], remember, you have 90 days in which, the plaintiff does, to bring in this third party. Apparently because of the fact that the government, either *state* or county government or local government, was never

> mentioned in that act, some appellate court has ruled that can't bring the government in. This just treats the government like everyone else. It says, you know, if the defendant pleads that the governmental [entity] is in fact the guilty party, then they shall be subject to the same rules of pleading as everyone else. That's what it does.

H.R. 1173, 101st Gen. Assem., 1st Sess. (Tenn. May 4, 1999) (enacted) (emphasis added). Representative Buck went on to say:

> There was a peculiar opinion saying [the savings statute] didn't apply to the government. This just treats *the state*[] and the governments and the cities just like everybody else. They play with the same rules everybody else does.

H.R. 1173, 101st Gen. Assem., 1st Sess. (Tenn. May 11, 1999) (enacted) (emphasis added). Senator Miller offered similar comments:

> I would submit to you that the code is inconsistent right now. If you, Senator, or a corporation, or a limited partnership, or any other entity other than a governmental entity were named by a defendant in [your] answer as being partially responsible for some act that was alleged to be the proximate cause of an injury, then the plaintiff would have 90 days to bring you in or that corporation in or that LLC in or whoever else, but not a city, a county, or *the state*. And that's where the law is not uniform.

S.R.1033, 101st Gen. Assem., 1st Sess. (Tenn. May 27, 1999) (enacted) (emphasis added) (bracketing in original).

From these statements, there can be no question that the legislature intended to include the State of Tennessee within the concept of "governmental entities." Further, as our holding is consistent with our decision in ***Conley v. State***, No. M2002-00813-COA-R3-CV, 2003 WL 21226810 (Tenn. Ct. App. W.S., filed May 27, 2003), *reh'g denied*, July 14, 2003, which is considered persuasive authority pursuant to Tenn. Sup. Ct. R. 4(H)(1), we adhere to our earlier ruling in ***Conley***.

The judgment of the Claims Commission is reversed. This case is remanded for further proceedings, consistent with this opinion. Costs on appeal are taxed to the appellee, the State of Tennessee.

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CHARLES D. SUSANO, JR., JUDGE